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JAMES R. BROWNING

In the

Supreme Court of the United States

OCTOBER TERM 1958

No. 754

THE TAFT HOTEL CORPORATION
Petitioner

vs.

HOUSING & HOME FINANCE AGENCY, ALBERT W. COLE, ADMINISTRATOR OF THE HOUSING & HOME FINANCE AGENCY, FRANK O'BRION, HARRY BARNETT, ANDREW EUSTON, FRED W. WATERMAN, JR., MATTHEW RUPPOLO, constituting the New Haven Redevelopment Agency and the City of New Haven
Respondents

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

WILLIAM R. MURPHY,
Counsel for Respondents Frank O'Brion et al constituting The New Haven Redevelopment Agency and the City of New Haven, 205 Church Street, New Haven, Connecticut

THE WHAPLES-BULLIS CO., NEW HAVEN, CONNECTICUT

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OPINIONS BELOW

The opinion below of the Court of Appeals for the Second Circuit is reported at 262 F. 2d 307 and of the United States District Court for the District of Connecticut at 162 Federal Supplement 538.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

Was the trial court correct in dismissing this action for want of jurisdiction where the plaintiff, as a taxpayer and hotel operator, sought to enjoin federal urban renewal grants in aid of a redevelopment project which would include a competing hotel?

STATUTES INVOLVED

The statutes involved are set forth in the petition and Appendix B to the petition.

STATEMENT OF THE CASE

Plaintiff is a hotel operator in New Haven, Connecticut. The defendants are (a) the United States Housing and Home Finance Agency and its Administrator, and (b) the City of New Haven, Connecticut and its Redevelopment Agency (hereinafter called the local defendants). The complaint alleged that the plaintiff would be unreasonably harmed by competition from a new hotel proposed to be built in the New Haven Church Street Redevelopment Area and sought an injunction against allegedly unlawful federal loans and grants for this redevelopment project.

These local defendants moved to dismiss the action under Rule 12 of the Federal Rules of Civil Procedure on the ground that the complaint failed to state a claim upon which relief could be granted because the plaintiff had no standing to sue, either as a taxpayer or as a person who may sustain economic loss through competition. The motion was granted and the ensuing judgment was affirmed in the Court of Appeals.

This is the only question in the case in which the local defendants are interested. It encompasses the matters stated in paragraphs 3, 4 and 5 of the petitioner's statement of questions presented. The so-called "venue" question, which is actually a question of personal jurisdiction, involves the federal defendants only.

ARGUMENT

1. *The Decision Below Was Clearly Correct.* The holding of the district court and the Court of Appeals that plaintiff had no standing to sue necessarily followed from the decisions of this court in *Massachusetts* vs. *Mellon*, 262 U. S. 447 (taxpayer) and *Alabama Power Company* vs. *Ickes*, 302 U. S. 464 (economic competitor). In the latter case, this court answered in the negative this "ultimate question":

> "Can anyone who will suffer injurious consequences from the lawful use of money about to be unlawfully loaned maintain a suit to enjoin the loan?"
>
> 302 U. S. 464, 480.

This question was properly raised in the trial court by the local defendants, as to whom there was admittedly proper venue and personal jurisdiction. Since the judgment must be sustained on this ground, the Court of Appeals was manifestly correct in affirming.

2. *There Is No Conflict Of Decisions.* The petition does not allege that there is any conflict of decisions on the standing to sue point which would justify grant of certiorari. The only other circuit court decision cited below was *Kansas City Power & Light Company* vs. *McKay*, 225 F. 2d 924 (D. C. Cir. 1955) *cert. denied* 350 U. S. 884, which is in complete accord.

3. *There Is No Important Question Of Federal Law.* In the petition we identified two questions of federal law bearing upon the merits, neither of which is so important or unsettled as to warrant review in this court.

(a) It is claimed that the Administrative Procedure Act gives plaintiff the right to seek judicial review of the Housing Administrator's decision approving the loan and grant contract with the local defendants. The pertinent language of the Act is as follows:

> "Except so far as . . . (2) agency action is by law committed to agency discretion any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof."
>
> 5 U. S. C. 1009.

Insofar as it is claimed that the Administrative Procedure Act itself enlarged the class of persons who are entitled to judicial review the petition is supported by no authority and is contrary to *Atcheson, Topeka and Santa Fe Railway Co.* vs. *United States*, 305 U. S. 892 (1955) affirming 130 F. Supp. 76 and *Kansas City Power & Light Company* vs. *McKay*, 225 F. 2d 924 (D. C. Cir. 1955) *cert. denied* 350 U. S. 884.

(b) The claim that Section 1731(b) of 12 United States Code forbids the use of federal funds for slum clearance if one of the planned reuses is the erection of a new hotel by private capital is frivolous. The statute, which has to do with mortgage insurance under the National Housing Act, has on its face nothing whatsoever to do with federal aid for slum clearance. In fact the legislative history of the Housing Act of 1956 demonstrates that Congress rejected an attempt to write such a limitation into Section 110(b) of the Housing Act of 1949, now 42 USC 1460b; see House Report No. 2363 June 15, 1956 to accompany H. R. 11742 U. S. Code Congressional and Administrative News, 84th Congress, Second Session 1956, Volume 3, pages 4536, 4569. Moreover, plaintiff is not in a protected class by virtue of this legislation and has no standing to sue because of it.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM R. MURPHY,
Counsel for Respondents.

March 30, 1959.

CUMBART, CORBIN, TYLER & COOPER,
205 Church Street,
New Haven, Connecticut.

CERTIFICATE OF SERVICE

I, William R. Murphy, counsel for respondent, in opposition to the petition for a writ of certiorari and a member of the bar of the Supreme Court of the United States do hereby certify that on the 1st day of April, 1959, I served copies of the foregoing brief in opposition to the petition for a writ of certiorari upon the petitioner by mailing a copy thereof, postage prepaid, to Leo E. Sherman, Esquire, Muller Avenue, Norwalk, Connecticut, and upon the other parties by mailing copies thereof to the Solicitor General, Department of Justice, Washington 25, D. C., The Housing & Home Finance Agency, Washington 25, D. C., Harry W. Hultgren, Jr., Esquire, United States Attorney for the District of Connecticut, Federal Building, New Haven, Connecticut.

WILLIAM R. MURPHY,
Counsel for Respondents.